

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

FILED  
IN CLERK'S OFFICE  
U.S. DISTRICT COURT E.D.N.Y.

★ MAY 09 2018 ★

CALVIN DURHAM,

Plaintiff,

-against-

SUFFOLK COUNTY CORRECTIONAL  
DEPARTMENT, *et al.*,

Defendants.

LONG ISLAND OFFICE

ORDER  
17-CV-2669 (JFB)(ARL)

JOSEPH F. BIANCO, District Judge:

On April 10, 2018, Magistrate Arielle R. Lindsay issued a Report and Recommendation (the “R&R,” ECF No. 22) recommending that the Court dismiss this case with prejudice for failure to prosecute. Magistrate Judge Lindsay’s R&R sets forth a detailed description of the history of this case, including plaintiff’s repeated failures to prosecute his claims and to comply with Court orders. The Court assumes familiarity with that history, and will not repeat it here. The R&R was served on plaintiff on April 11, 2018. (ECF No. 23.) The R&R instructed that any objections to the R&R be submitted within fourteen (14) days of service of the R&R. (R&R at 3.) The date for filing any objections has thus expired, and plaintiff has not filed any objection to the R&R. For the reasons set forth below, the Court adopts the R&R in its entirety.

Where there are no objections to a report and recommendation issued by a magistrate judge, the Court may adopt the report and recommendation without *de novo* review. *See Thomas v. Arn*, 474 U.S. 140, 150 (1985) (“It does not appear that Congress intended to require district court review of a magistrate’s factual or legal conclusions, under a *de novo* or any other standard,

when neither party objects to those findings.”); *see also Mario v. P & C Food Mkts., Inc.*, 313 F.3d 758, 766 (2d Cir. 2002) (“Where parties receive clear notice of the consequences, failure timely to object to a magistrate’s report and recommendation operates as a waiver of further judicial review of the magistrate’s decision.”); *cf.* 28 U.S.C. § 636(b)(1)(c) and Fed. R. Civ. P. 72(b)(3) (requiring *de novo* review after objections). However, because the failure to file timely objections is not jurisdictional, a district judge may still excuse the failure to object in a timely manner and exercise its discretion to decide the case on the merits to, for example, prevent plain error. *See Cephas v. Nash*, 328 F.3d 98, 107 (2d Cir. 2003) (“[B]ecause the waiver rule is non jurisdictional, we ‘may excuse the default in the interests of justice.’” (quoting *Thomas*, 474 U.S. at 155)).

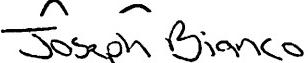
Although plaintiff has waived any objection to the R&R and thus *de novo* review is not required, the Court has conducted a *de novo* review of the R&R in an abundance of caution. Having conducted a review of the Complaint, the motion papers, and the applicable law, and having reviewed the R&R *de novo*, the Court adopts the findings and recommendations contained in the R&R in their entirety. Accordingly,

IT IS HEREBY ORDERED that this case is dismissed with prejudice under Rule 41(b) as to all defendants.

IT IS FURTHER ORDERED that defendants serve a copy of this Order on plaintiff. The Clerk of the Court is directed to close the case. The Court certifies pursuant to 28 U.S.C. § 1915(a)(3) that any appeal from this Order would not be taken in good faith, and *in forma*

*pauperis* status is therefore denied for the purpose of any appeal. *See Coppedge v. United States*, 369 U.S. 438, 444-45 (1962).

SO ORDERED.

  
JOSEPH F. BIANCO  
UNITED STATES DISTRICT JUDGE

Dated: May 9, 2018  
Central Islip, NY